

Exhibit 12

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.,
Civil Action No. 01-12257-PBS

Exhibit to the July 24, 2009, Declaration of George B. Henderson, II
In Support of United States' Common Memorandum of Law in Support of Cross-Motions for
Partial Summary Judgment and in Opposition to the Defendants' Motions for Summary
Judgment

Springfield, IL

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE LITIGATION) MDL No. 1456

-----) Civil Action

THIS DOCUMENT RELATES TO:) No. 01-12257-PBS

United States of America, ex. rel.) Hon. Patti Saris

Ven-a-Care of the Florida Keys,) Magistrate Judge

Inc., v. Abbott Laboratories, Inc.,)

Civil Action No. 06-11337-PBS; and)

United States of America, ex. rel.) VIDEOTAPED

Ven-a-Care of the Florida Keys,) DEPOSITION OF

Inc., v. Dey, Inc., et. al., Civil) THE ILLINOIS

Action No. 05-11084-PBS; and United) DEPARTMENT OF

States of America, ex. rel.) HEALTHCARE AND

Ven-a-Care of the Florida Keys,) FAMILY SERVICES

Inc., v. Boehringer Ingelheim) by JAMES PARKER

Corp. et. al., Civil Action)

No. 07-10248-PBS.) NOVEMBER 18, 2008

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Page 2

1 Videotaped deposition of JAMES PARKER,
2 called by the Plaintiffs for examination, taken
3 pursuant to notice, agreement and by the provisions
4 of the Rules of Civil Procedure for the United
5 States District Courts pertaining to the taking of
6 depositions, taken before DEBORAH HABIAN, a Notary
7 Public within and for the County of Cook, State of
8 Illinois, and a Certified Shorthand Reporter of
9 said State, at the United States Attorney's Office,
10 318 South 6th Street, Springfield, Illinois, on the
11 18th day of November, 2008, at 9:17 a.m.

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Page 62

1 Q. Does HFS process pharmacy claims
2 consistent with Illinois' reimbursement
3 methodology?

4 A. Yes.

5 Q. You mentioned before that Illinois
6 obtains its pricing information from FDB; is that
7 right?

8 A. Correct.

9 Q. In what form does Illinois obtain the
10 data from FDB?

11 A. It comes in a -- currently in an
12 electronic file that we get through an Internet
13 exchange, an FTP, which is techno-talk for
14 something I can't remember now, but it's a file
15 exchange. It used to be -- it used to come on a
16 physical tape that we would load into our
17 computer system. File Transfer Protocol I think
18 is what FTP stands for.

19 Q. And is that what the State of Illinois
20 relies on when it implements its reimbursement
21 methodology for Estimated Acquisition Cost?

22 A. Yes.

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Page 63

1 Q. What is included in the FDB data that's
2 obtained by the State?

3 A. It'S a customized file with a number of
4 data elements including AWP, package sizes, NDCs.
5 There's what's called generic codes. There are
6 innovators indicators or -- you know, that
7 indicate whether it's a single source or a multi-
8 source drug. I think there's dose information,
9 package size information, a number of data
10 elements, some of which I'm probably not covering
11 and some of which I'm probably unaware of.

12 Q. Is the drug infor -- drug pricing
13 information from FDB static or dynamic?

14 A. We get a weekly update from FDB with
15 constant changes.

16 Q. Are new drugs regularly added also?

17 A. New drugs, new versions of drug, new
18 package sizes of drugs, each with its own -- each
19 of those has -- carries a new NDC which has to be
20 priced, whether it's a new package size or a new
21 dosage form, a new delivery system. They put
22 them into easy interjecting pens and things like

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Page 64

1 that.

2 Q. Why does HFS need updated information?

3 A. Because the prices of the drugs
4 constantly change, and we need to cover the cost
5 of the pharmacies in purchasing and dispensing
6 the drugs. So if we don't catch up to a price
7 increase, we immediately hear from pharmacies
8 that there's been a price increase and we're not
9 covering their costs.

10 Q. During any of the time periods covered
11 by the summary chart in Exhibit 3, were there any
12 provider types whose claims were not paid based
13 on the reimbursement methodology set out here?

14 A. Yes.

15 Q. Who were those providers?

16 A. Physicians that billed drugs through
17 the physician billing system, which is a
18 different -- a different claims processing system
19 than the pharmacy system. Physicians were paid
20 differently.

21 Q. In the reimbursement methodologies
22 reflected here, are there any times when the

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Page 67

1 based change. So... And we don't do that
2 retroactively. So we would -- when these State
3 Plans say "as of this date," we're talking about
4 a date of service after that date.

5 Q. Okay. What if a new NDC was entered
6 into the system and it did not have an AWP, how
7 would the system adjudicate that claim?

8 A. It would reject the claim. It would
9 not recognize it.

10 Q. What would happen if the FDB
11 information did not have an AWP reported for a
12 drug that had had AWP reported in the past, how
13 would the system adjudicate that?

14 A. Our system would use the last reported
15 AWP in our pricing history.

16 Q. So if, for example, a manufacturer
17 didn't change its AWP for a year or longer, the
18 State of Illinois system would simply default
19 back to the earlier AWP; is that correct?

20 A. That's correct.

21 Q. Would it be possible for your State's
22 pharmacy program staff to obtain on a regular

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Page 68

1 basis the AWP's or the WAC's for all of the NDCs
2 that you have to cover without having some type
3 of pricing database such as you use with FDB?

4 MR. BERLIN: Objection, form.

5 THE WITNESS: No. I mean, as it is, it
6 -- we have people that work full-time coding the
7 drugs that come in on the weekly tapes because
8 there are things we have to code for each, you
9 know, drug, you know, does it require prior
10 approval, is it preferred or non-preferred in our
11 -- in our system. Dosing limits, we have limits.
12 We may have an age edit on a drug. So we're
13 taxed just getting the data into the system when
14 we get it in a file. To try to actually input --
15 find another source and input the data ourselves
16 would be overwhelming.

17 BY MS. OBEREMBT:

18 Q. Does the claims database that your
19 office maintains accurately represent the claims
20 paid by the State of Illinois?

21 A. Yes, it does.

22 Q. How are the claims actually paid?

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Page 72

1 the State via FDB, right?

2 A. Correct.

3 Q. Are you familiar with the term "Average
4 Manufactures Price," also known as AMP?

5 A. Yes.

6 Q. What is is that?

7 A. It is a price that is calculated
8 according to provisions of I believe it's Section
9 1927 of the Social Security Act and reported by
10 manufacturers to the federal government.

11 Q. Do manufacturers routinely report AMP
12 to the State of Illinois?

13 A. No.

14 Q. Are you familiar with the term "Unit
15 Rebate Amount"?

16 A. Yes.

17 Q. What is that?

18 A. It is a -- an amount of money that is
19 rebated to the Medicaid program by manufacturers
20 for each unit of a drug that's from a rebating
21 manufacturing covered in the program.

22 Q. Does the State calculate the Unit

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Page 73

1 Rebate Amount?

2 A. No.

3 Q. Who does?

4 A. Federal government.

5 Q. Prior to the passage of the Deficit
6 Reduction Act, did CMS provide Illinois with AMPs
7 for manufacturers who sold drugs here in
8 Illinois?

9 A. No. CMS considered it confidential
10 information that they did not share with the
11 states.

12 Q. Did Illinois ever attempt to reverse-
13 engineer an AMP from a Unit Rebate Amount?

14 MR. MALONEY: Objection, form.

15 THE WITNESS: No.

16 BY MS. OBEREMBT:

17 Q. Okay, first of all, do you know what I
18 mean when I say "reverse-engineer an AMP from the
19 Rebate Unit Amount"?

20 A. I know what you mean. I wouldn't know
21 how to do it.

22 Q. All right. What's your understanding

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Page 74

1 of what I'm referring to?

2 A. It would be where, you know, through a
3 mathematical equation, you know if Unit Rebate
4 Amount is this, AMP must be this by taking other
5 pieces of information available.

6 Q. And HFS has never tried to determine an
7 AMP by looking at a Unit Rebate Amount, has it?

8 A. No.

9 Q. Who manages the rebate program for the
10 State of Illinois?

11 A. There is a -- a unit within the
12 Division of Finance that -- using the rebate tape
13 we get from the federal government, that
14 calculates and invoices manufacturers the amounts
15 of rebates due and collects those funds.

16 Q. Is the Division of Finance then
17 separate from the division that handles
18 reimbursement of pharmaceutical claims?

19 A. Yes.

20 Q. In the past few years, has there been
21 any movement toward change in the treatment of
22 AMP data and its possible use by the states?